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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-645

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC., 1990 M Street, N.W., Washington, D.C. 20036,

and

NATIONAL RIGHT TO WORK COMMITTEE, 1990 M Street, N.W., Washington, D.C. 20036,

Petitioners,

—v.—

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA and its LOCALS 1093, 558 and 25, 8000 East Jefferson Avenue, Detroit, Michigan 48214,

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS and its DISTRICT LODGE 1578, 1300 Connecticut Avenue, N.W., Washington, D.C. 20036,

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES and its DISTRICT COUNCIL 77, 1155 Fifteenth Street, N.W., Washington, D.C. 20005,

AMERICAN FEDERATION OF TEACHERS, and its affiliate, DETROIT FEDERATION OF TEACHERS, 1012 14th Street, N.W., Washington, D.C. 20005,

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, ASSOCIATED ACTORS AND ARTISTES OF AMERICA, AFL-CIO, 1350 Avenue of the Americas, New York, N.Y. 10019,

UNITED FARM WORKERS NATIONAL UNION, AFL-CIO, P.O. Box 62, Keene, California,

(Continued on inside front cover)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, AFL-CIO and its LOCAL 146, 1750 New York Avenue, N.W., Washington, D.C. 20006,

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO and its LOCAL 383, 905 16th Street, N.W., Washington, D.C. 20006,

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, and its DISTRICT 7 and LOCAL 7495, 1925 K Street, N.W., Washington, D.C. 20006,

and

OIL CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO and its LOCAL 3-495, P.O. Box 2812, Denver, Colorado 80201,

Respondents.

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OIL CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO and its LOCAL 3-495, P.O. Box 2812, Denver, Colorado 80201,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

National Right to Work Legal Defense and Education Foundation, Inc. ("Foundation") and National Right to Work Committee ("Committee") petition for a writ of certiorari to review the per curiam order of the United States Court of Appeals for the District of Columbia Circuit entered on June 28, 1974 dismissing the appeal of the Foundation and the Committee. The court below thereby left standing the order of the United States District Court for the District of Columbia which orders the disclosure to the plaintiffs of 190 names of contributors to the Foundation.

Opinions Below

The per curiam order of the Court of Appeals, filed June 28, 1974, is unreported (11A).* The opinion of the District Court is reported at 376 F. Supp. 1060 (1A). The order of the District Court, which was left standing by the Court of Appeals, is unreported (9A).

* Citations with the suffix "A" are to the Appendix hereto.

Jurisdiction

The order of the Court of Appeals was entered on June 28, 1974 (11A). On September 13, 1974 The Chief Justice extended the time in which to file a petition for a writ of certiorari to and including November 25, 1974 (12A). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

Questions Presented

1. Whether an appeal may be taken from a District Court disclosure order which finally determines and overrides First Amendment rights.

2. In this action under the Landrum-Griffin Act to bar legal assistance to needy workers from the Foundation, a tax-exempt legal aid organization, should the First Amendment rights of privacy and freedom of association of 190 Foundation contributors be overridden and the Foundation's ability to provide free legal services impaired by a District Court order requiring disclosure of contributors' names and the amounts of their contributions?

Constitutional and Statutory Provisions Involved

This case involves the First, Fourth, Ninth and Tenth Amendments to the United States Constitution.

This case also involves 28 U.S.C. §1291 which provides that:

> "The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts

of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

This case also involves §101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959 ("Act"), known as the "Landrum-Griffin Act", 73 Stat. 522, 29 U.S.C. §411 (a)(4), which provides that:

"No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further*, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition."

Since the instant case draws into question the constitutionality of the Landrum-Griffin Act, an Act of Congress affecting the public interest, and neither the United States nor any agency, officer or employee thereof is a party, it is noted that 28 U.S.C. §2403 may be applicable. To our knowledge, no court of the United States as defined by 28 U.S.C.

§451 has, pursuant to 28 U.S.C. §2403, certified to the Attorney General the fact that the constitutionality of such Act of Congress has been drawn into question.

Statement of the Case

The Foundation and the Committee are defendants in an action brought by ten national and international unions ("plaintiffs") in the District Court for the District of Columbia. Jurisdiction is alleged under §102 of the Landrum-Griffin Act, 29 U.S.C. §412; federal question jurisdiction, 28 U.S.C. §1331; and jurisdiction under a federal statute regulating commerce, 28 U.S.C. §1337. The unions assert that the Foundation acts as a conduit for "interested employer[s]" to finance litigation against various labor organizations, contrary to §101(a)(4) of the Act. They seek damages and declaratory and injunctive relief.

The Committee is a non-profit, tax-exempt corporation established in 1955 to promote voluntary unionism by various educational activities. The Foundation is an independent non-profit, tax-exempt corporation established in 1968 to give free legal assistance to needy workers injured by compulsory unionism. Both organizations are supported by contributions from the general public.

The discovery record shows total donations to the Foundation in 1972 were $1,727,572 with an average contribution of less than $22 (Larson dep. 467).* One-third of the donors identified themselves as being business contributors and their average contribution was less than $73. No single

* Citations to "Larson dep." refer to the discovery deposition of Foundation President Reed Larson taken by plaintiff unions.

contribution was more than $5,000 and only ten contributions were between $1,000 and $5,000 each.

With its legal staff and cooperating lawyers throughout the United States, the Foundation provides legal assistance in forty cases (Larson dep. 873) challenging various unlawful aspects of compulsory unionism such as (a) racial discrimination, *e.g., Sidberry* v. *Stage Employees Local 307*, 4 FEP Cases 1272 (E.D. Pa. 1972); (b) the unauthorized use of union agency fees for political purposes, *e.g., Seay* v. *McDonnell Douglas Corp.*, 427 F.2d 326 (9 Cir. 1970); and (c) union violence against workers who lawfully refuse to join a union, *e.g., Richardson* v. *Communications Workers of America*, 443 F.2d 974, 983-84 n.12 (8 Cir. 1971).

In their first cause of action, the unions specify 17 Foundation-supported lawsuits in which many employers and plaintiff unions are defendants. The unions charge that by such support the Foundation, the Committee and "employers giving financial support to the Foundation, implement a conspiracy between those parties to violate Section 101(a)(4) of the Act" (Amended Complaint ¶14). Without first seeking discovery from Foundation-assisted workers or from the workers' employers, the unions served interrogatories asking the Foundation to identify 190 of its contributors and their contributions.* The Foundation and the Committee objected, maintaining that such information

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* The unions seek disclosure of the names of (a) 37 Foundation contributors who contributed between $500 and $5,000 in 1972; (b) the first 37 Foundation contributors or the last 37 such contributors, in alphabetical order, who contributed between $100 and $500 in 1972; and (c) the amounts of contributions to the Foundation during 1971 and 1972 of the 116 companies whose officers or employees are listed as members of the Foundation's publicly identified Advisory Council.

was protected under the First, Fourth, Ninth and Tenth Amendments and that disclosure would violate constitutionally guaranteed privacy and freedom of association and impair the ability of the Foundation to provide legal services to needy workers.* They also argued that at a minimum, First Amendment rights should not be infringed without first exhausting all reasonable alternatives to determine "interest" such as initiating discovery of Foundation-supported plaintiffs or their employers or members of the Advisory Council.

The District Court, Hon. Charles R. Richey, J., on plaintiffs' motion, nevertheless directed disclosure and specifically authorized the unions' counsel to make the names known to persons undertaking further investigations (9A-10A). The District Court did not discuss petitioners' First Amendment claims nor did it determine that the unions could not establish the application of the Act's "interested employer" proviso absent disclosure of contributors' names.

The District Court, on petitioners' timely application, declined to certify its order for interlocutory appeal pursuant to 28 U.S.C. §1292(b), stating and rejecting for the first time petitioners' First Amendment claims and concluding that "there is no other reasonable way" for the unions "to obtain the information sought" (14A).

Petitioners' timely appeal from the disclosure order was summarily dismissed by the Court of Appeals on June 28, 1974 on the ground of lack of jurisdiction (11A).

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* For brevity, petitioners' constitutional claims are hereinafter referred to as "First Amendment rights."

On June 27, 1974 petitioners filed a petition for a writ of mandamus in the Court of Appeals and that Court stayed and continues to stay enforcement of the District Court's disclosure order pending further proceedings on mandamus (17A). Since the mandamus petition is still *sub judice,* we respectfully request that no action be taken on the instant petition for writ of certiorari until the Court of Appeals has acted upon the pending petition for writ of mandamus.

REASONS FOR GRANTING THE WRIT

POINT I

In construing the "interested employer" proviso of the Landrum-Griffin Act to authorize its order compelling the disclosure of Foundation contributors, the District Court violated First Amendment rights of privacy and freedom of association and impaired the Foundation's ability to provide free legal services to needy workers.

This case involves a national legal aid organization whose forty cases address federal labor policy and related constitutional issues in state and federal courts.* Court-ordered disclosure of its contributors' names and amount of contributions and the resulting impairment of its ability to raise funds is of national consequence.

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* *E.g., Buckley* v. *American Federation of Television and Radio Artists,* 496 F.2d 305 (2 Cir. 1974), *petition for cert. filed,* 43 U.S.L.W. 3172 (U.S. Oct. 1, 1974) (No. 74-313) (First Amendment held not to bar compulsory union dues by television commentator); *Lewis* v. *American Federation of Television and Radio Artists,* 34 N.Y.2d 265, 313 N.E.2d 735, 357 N.Y.S.2d 419, *petition for cert. filed,* 43 U.S.L.W. 3172 (U.S. Oct. 1, 1974) (No. 74-314) (same holding as to radio commentator).

A. The Statutory Scheme

The fundamental issue here is whether First Amendment rights of the Foundation's contributors can be impaired by construing the Landrum-Griffin Act's "interested employer" proviso to require disclosure of contributors' names and contributions. Such construction is unjustified. There is no suggestion in the legislative history of §101(a)(4) that Congress intended to prohibit independent organizations like the Foundation from assisting workers' lawsuits. To the contrary, the legislative history clearly shows that "interested employer" was *not* to include "a friend, who happens to be an employer of people in a totally unrelated business, a bank or anything else. . . ." 105 CONG. REC. 6725 (April 25, 1959) (remarks of Senator Javits).

The District Court below is alone in holding that the "interested employer" proviso applies to *all* suits by union members against their unions irrespective of whether the members' bill of rights under Title I of the Landrum-Griffin Act are in issue (6A-8A).* Every other court addressing

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* None of the cases cited by the District Court (4A-6A) in support of its conclusion, including *NLRB* v. *Industrial Union of Marine & Ship Workers*, 391 U.S. 418 (1968), involved the "interested employer" proviso; rather, all of them concerned the first proviso of §101(a)(4) which requires union member exhaustion of internal union remedies prior to suit. Such exhaustion in Title I cases and all other cases merely codifies prior law and, in any event, is discretionary with the court. *E.g.*, *NLRB* v. *Industrial Union of Marine & Ship Workers*, *supra*, 391 U.S. at 426 and n.8; *Underwood* v. *Maloney*, 152 F. Supp. 648, 658 (E.D. Pa. 1957), *aff'd in part, rev'd in part on other grounds*, 256 F.2d 334 (3 Cir.), *cert. denied*, 358 U.S. 864 (1958); *Durkin* v. *Murray*, 90 F. Supp. 367, 368 (D.D.C. 1950); *Madden* v. *Atkins*, 4 N.Y.2d 283, 291-92, 151 N.E.2d 73, 76-77, 174 N.Y.S.2d 633, 638 (1958); *Naylor* v. *Harkins*, 11 N.J. 435, 444, 94 A.2d 825, 830 (1953).

The ban on "interested employer" financing, however, restricts a union member's pre-existing right to assistance from whomever he wishes. Section 103 of the Landrum-Griffin Act, 29 U.S.C. §413,

this question, including the District Court below in an earlier opinion in this action reported at 366 F. Supp. 46, 48 (D.D.C. 1974), has held to the contrary. *Adamszewski* v. *Local 1487 Machinists*, 496 F.2d 777, 784-85 (7 Cir.), *cert. denied*, 43 U.S.L.W. 3280 (U.S. Nov. 12, 1974) (No. 74-231); *Verville* v. *International Association of Machinists*, Civil No. 37650 (E.D. Mich. May 29, 1974) (slip op. 10), *appeal pending*, Nos. 74-1914 and 74-1915 (6 Cir.). Title I is part of an Act described by this Court as "the first major attempt by Congress to regulate the *internal affairs of labor unions.*" *Trbovich* v. *United Mine Workers of America*, 404 U.S. 528, 530 (1972) (Emphasis added.) None of the 17 Foundation-supported lawsuits named in the amended complaint involves a Title I right.

The Foundation by definition is not an "interested employer" under §101(a)(4) because it has no economic stake in or employment relationship to any party in litigation which it supports. Congress in fact authorized an employer like a bank or a worker's friend to provide assistance to plaintiff workers; only "interested" employers were barred from giving such assistance. The Foundation's general concern for plaintiff workers does not constitute "interest" under §101(a)(4). *Farowitz* v. *Associated Musicians Local 802*, 241 F. Supp. 895, 908 (S.D. N.Y. 1965).

Assuming *arguendo* the contributors are "interested" within the meaning of §101(a)(4), their "interest" is rele-

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preserves this right as to non-Title I issues such as claims under the Railway Labor Act, 45 U.S.C. §§151-188, and §301 of the Taft-Hartley Act, 29 U.S.C. §185. *Adamszewski* v. *Local 1487 Machinists*, 496 F.2d 777, 784-85 (7 Cir.), *cert. denied*, 43 U.S.L.W. 3280 (U.S. Nov. 12, 1974) (No. 74-231).

vant only if they influence the Foundation's litigation decisions. For under the Constitution, the statute should not be read as outlawing contributions on the basis of contributors' mere beliefs. There is no evidence that the contributors have any influence over litigation and the Foundation's Policy Guidelines prohibit acceptance of any "contribution made for the purpose of financing or assisting in financing any litigation on behalf of the contributor or any employee of the contributor" (Larson dep. 899). While we do not begrudge the unions' right to explore this issue by appropriate discovery directed at Foundation staff, at Foundation-supported plaintiffs or their employers, we maintain that §101(a)(4) cannot constitutionally compel disclosure of contributors' names where, as here, the unions have made no showing that this is the only reasonable way to determine contributor "interest." The unions' position, sustained in the District Court, is that their amended complaint and their failure so far in discovery to find *any* contributor influence over Foundation-supported litigation authorize subordination of the contributors' First Amendment rights. As discussed below, this position is without merit.

B. As an Important Issue of First Impression, This Court Should Determine the Appealability of a Disclosure Order Which Finally Determines and Violates First Amendment Rights

In ordering disclosure of 190 names of Foundation contributors and their contributions, the District Court finally determined First Amendment rights independent of and collateral to the principal controversy in this action, namely, whether §101(a)(4) forbids legal assistance by the Foundation to workers suing their employers and unions.

This Court has not previously determined whether disclosure orders violative of the First Amendment are appealable. This issue is of manifest importance to the proper functioning of pre-trial discovery in the district courts because such disclosure orders, if unappealable, would vitiate First Amendment rights repeatedly upheld by this Court. *E.g., Kusper* v. *Pontikes*, 414 U.S. 51, 56-57 (1973); *Pollard* v. *Roberts*, 283 F. Supp. 248 (E.D. Ark.) (3-judge court), *aff'd per curiam*, 393 U.S. 14 (1968); *NAACP* v. *Alabama*, 357 U.S. 449 (1958).

The disclosure order below meets all the tests for appealability set forth in *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546-47 (1949), where this Court held that a district court order refusing to require security for reasonable expenses and attorney's fees was appealable because at the time of final judgment, "it will be too late effectively to review the present order, and the rights [in question] . . . vill have been lost, probably irreparably." 337 U.S. at 546. *Cohen* "appears to fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Id.*

In *Swift & Co. Packers* v. *Compania Colombiana Del Caribe, S.A.*, 339 U.S. 684, 688-89 (1950), this Court laid particular stress on the importance of the rights at issue. There, the district court vacated an attachment of a vessel allegedly transferred in fraud of creditors. This Court held, relying on *Cohen*, that the order was immediately appealable because subsequent appellate review "would be an empty rite after the vessel had been released and

the restoration of the attachment only theoretically possible." 339 U.S. at 689. "[A]ppeals only from final decisions in 28 U.S.C. §1291 should not be construed so as to deny effective review of a claim fairly severable from the context of a larger litigious process." *Id.*

Last term in *Eisen* v. *Carlisle & Jacquelin*, 94 S. Ct. 2140, 2149-50 (1974), this Court reaffirmed the doctrine of *Cohen*, holding that an order concerning class action notice and costs was appealable where it conclusively determined "a collateral matter unrelated to the merits of petitioner's claims." 94 S. Ct. at 2150.

There can be no doubt here that disclosure of Foundation contributors' names and amounts of contributions conclusively disposes of their First Amendment rights. The very purpose of privacy and freedom of association is to permit joint activity free of unwarranted governmental intrusion and forced disclosure. Revealing the contributors' names will expose them to reprisals* from those wishing to discourage such contributions, with the consequence that the Foundation—and the workers it assists —will face significant diminution of financial support. Once contributors' names are revealed or the amounts of their contributions disclosed to the unions,** subsequent

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* People who do not support unions reportedly have been victimized by union personnel. *E.g., Richardson* v. *Communications Workers of America*, 443 F.2d 974, 983-84 n.12 (8 Cir. 1971); Wall St. J., July 15, 1971, at 4, col. 1; C. Stevenson, *Labor Violence—A National Scandal*, Reader's Digest at 153 (Aug. 1973).

** The disclosure order offers vague and inadequate protection by providing that contributors' names and contributions "not be made public and that Plaintiffs' counsel make known such employer identities only to particular persons whose assistance is required for the investigation of the contributing employers' interests and activities" (10A). The "employers' interests and activities" subject

judicial action will be ineffectual. *See, e.g., Harper & Row Publishers, Inc.* v. *Decker*, 423 F.2d 487, 490 (7 Cir. 1970), *aff'd by an equally divided court*, 400 U.S. 348, *rehearing denied*, 401 U.S. 950 (1971).

Even if such disclosure were viewed as integral rather than collateral to the unions' claim that the Foundation is an "interested employer", the disclosure order is nonetheless appealable because it irrevocably determines First Amendment rights without any later opportunity by judicial process or otherwise to erase the information from the minds of union representatives. Where First Amendment rights are imperiled they should be at least as well protected by appellate review as rights pertaining to fixing bond for costs or vacating attachments or permitting class actions. The disclosure order is appealable because review after final judgment would be plainly inadequate. *Cohen* v. *Beneficial Industrial Loan Corp., supra; Swift & Co. Packers* v. *Compania Colombiana Del Caribe, S.A., supra; Eisen* v. *Carlisle & Jacquelin, supra; cf. Harper & Row Publishers, Inc.* v. *Decker, supra* (mandamus issued to review

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to "investigation" are synonymous with plaintiff-directed *carte blanche* inquiry, namely, (a) "whether the employers are in the same 'line of business' as the unions against whom they are financing litigation"; (b) the "employers' relationships with the unions against whom they are financing litigation through the Foundation"; (c) "whether contributing employers have a stake in the legal propositions being advanced in the suits against the unions which they are financing"; (d) "whether the same contributing employers are also financing the defendant Committee's efforts, which include direct anti-union lobbying and persuader activities"; and (e) "other anti-union conduct of the contributing employers, which will bear upon their 'interest' in contributing to the litigations against unions financed and managed by the defendant Foundation" (Plaintiffs' Memorandum Supporting Motion to Compel Answers to Interrogatories, served January 18, 1974, at 4-5).

order infringing attorney-client privilege); *Hartley Pen Co.* v. *United States District Court*, 287 F.2d 324, 330 (9 Cir. 1961) (mandamus issued to review order requiring divulgence of trade secret).

Moreover, in *Gillespie* v. *United States Steel Corp.*, 379 U.S. 148 (1964), this Court relied on the fundamental importance of the rights at issue in holding a district court ruling appealable because it dismissed, prior to trial, state law and unseaworthiness claims in a Jones Act suit. This Court reasoned that the district court ruling, like the District Court order below, was " 'fundamental to the further conduct of the case.' " 379 U.S. at 154. In the unions' view, the contributors' identities are similarly fundamental and, we maintain, First Amendment rights are no less so. Accordingly, the District Court disclosure order is appealable.*

C. The Disclosure Order Conflicts With the Settled Principles of *NAACP* v. *Alabama* and *NAACP* v. *Button* and Construes the "Interested Employer" Proviso of the Landrum-Griffin Act as Requiring Impairment of First Amendment Rights

The District Court's disclosure order premised upon §101 (a)(4) violates Foundation contributors' First Amendment rights to privacy and freedom of association in their support of a bona fide, charitable tax-exempt legal aid organization. Disclosure of contributors' names nullifies First

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* *See* the patent suit, *Ochsner* v. *Millis*, 382 F.2d 618 (6 Cir. 1967), where the Sixth Circuit held appealable a district court discovery order refusing to compel a party's answer to deposition questions. The Sixth Circuit reasoned that the discovery order "constituted a final decision for all practical purposes, for if it be error, this is the only opportunity which the junior parties will have to *effectively* review the District Court's order." 382 F.2d at 623 (emphasis original).

Amendment rights "at the very moment of [their] assertion." *NAACP* v. *Alabama*, 357 U.S. 449, 459 (1958). The District Court's disclosure order flatly violates settled principles, as applicable to the federal government as to the states, concerning rights of freedom of association and privacy. In holding that Alabama could not constitutionally compel disclosure of membership lists of the National Association for the Advancement of Colored People which had *inter alia* furnished financial support and legal assistance to blacks, a unanimous Court stated:

> "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between freedom of speech and assembly. . . . It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment which embraces freedom of speech.
>
> • • •
>
> . . . This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. . . . Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *NAACP* v. *Alabama*, *supra*, 357 U.S. at 460, 462. (Citations omitted.)

Foundation contributors, like Alabama contributors to the NAACP, are not a popular minority and their common purpose to assist an even more unpopular minority—workers suing their employers and unions—will, it is fair to say, be gravely impaired by disclosure of their names and

amounts of contributions.* First Amendment rights do not disappear merely because, as here, it is alleged that such contributions were made by "interested employer[s]." Even criminal allegations of misconduct are not sufficient to penetrate the shield of the First Amendment.** *Bates* v. *City of Little Rock*, 361 U.S. 516 (1960); *Pollard* v. *Roberts*, 283 F. Supp. 248 (E.D. Ark.) (3-judge court), *aff'd per curiam*, 393 U.S. 14 (1968); *see also*, *Eastland* v. *United States Servicemen's Fund*, 488 F.2d 1252 (D.C. Cir. 1973), *cert. granted*, 43 U.S.L.W. 3208 (U.S. Oct. 15, 1974) (No. 73-1923); *Bisceglia* v. *United States*, 486 F.2d 706 (6 Cir. 1973), *cert. granted*, 94 S. Ct. 1931 (1974). It follows that civil allegations of statutory violations are, by themselves, insufficient to vitiate First Amendment protections.†

The unions, however, prevailed on the District Court to accept their view that contributors' identities went to the heart of their case, thereby requiring immediate dis-

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* *E.g.*, *see* reports of union violence against non-union sympathizers and facilities. Philadelphia Evening Bulletin, July 15, 1974, at 1, col. 3; Washington Post, March 2, 1974, at E38, col. 1; Kansas City, Mo. Star, Sept. 30, 1973, at 8A, col. 1.

** First Amendment rights of *group* privacy and freedom of association, which necessarily involve disclosure of identities to a group or its representatives, differ fundamentally, therefore, from the Fifth Amendment *individual* privilege against self-incrimination which has been held inapplicable to incriminating documents in the hands of non-party accountants and banks. *See*, *Couch* v. *United States*, 409 U.S. 322 (1973); *United States* v. *Bank of Commerce*, 405 F.2d 931 (3 Cir. 1969).

† Nor can the disclosure of political contributions mandated by the Federal Election Campaign Act of 1971 ("FECA"), 86 Stat. 3, 47 U.S.C. §801 *et seq.* and 2 U.S.C. §431 *et seq.*, be analogized to Foundation contributions. Bona fide non-political private organizations "dealing with national policy" under First Amendment aegis are not subject to FECA disclosure requirements. *United States* v. *National Committee for Impeachment*, 469 F.2d 1135, 1142 (2 Cir. 1972); *American Civil Liberties Union, Inc.* v. *Jennings*, 366 F. Supp. 1041, 1054-57 (D.D.C. 1973) (3-judge court), *prob. juris. noted sub nom.*, *Staats* v. *American Civil Liberties Union, Inc.*, 94 S. Ct. 3066 (1974).

closure despite the contributors' constitutional rights. But the unions demonstrably failed to explore other available and more relevant routes of discovery, such as depositions of Foundation-supported plaintiffs and their employers and examination of publicly identified members of the Foundation's Advisory Council. These deponents might be asked if they know of contributions to the Foundation by any employer. The record below, however, is barren of any constitutional basis for overriding the contributors' First Amendment rights. In these circumstances and assuming *arguendo* that at some point the contributors' First Amendment rights yield to the unions' demands for disclosure, the District Court was manifestly premature in requiring disclosure when other less disruptive constitutional avenues of discovery remain available. *Baker* v. *F & F Investment*, 470 F.2d 778 (2 Cir. 1972), *cert. denied*, 411 U.S. 966 (1973) (disclosure of confidential news sources denied because plaintiff made no effort to exhaust other available sources of information); *Carey* v. *Hume*, 492 F.2d 631 (D.C. Cir.), *petition for cert. dismissed*, 94 S. Ct. 2654 (1974) (disclosure of confidential news sources ordered *after* plaintiff demonstrated that he had exhausted all other practical sources of the information); *Garland* v. *Torre*, 259 F.2d 545 (2 Cir.), *cert. denied*, 358 U.S. 910 (1958) (same as *Carey* v. *Hume*, *supra*). In addition, the District Court below in another action denied a request for disclosure of confidential news sources where no demonstration had been made that other means had been exhausted. *Democratic National Committee* v. *McCord*, 356 F. Supp. 1394, 1398 (D.D.C. 1973) (Richey, J.).

As a legal aid organization, the Foundation is constitutionally no different from the NAACP Legal Defense and Educational Fund ("LDF") or the American Civil Liberties Union. The District Court's order would force disclosure of corporate contributors to all such organizations where they aid workers who assert constitutional

or other legal claims against unions.* By construing the "interested employer" proviso of §101(a)(4) to reach the Foundation's constitutionally protected activities, the District Court rendered the statute constitutionally infirm and violated the principle that "groups can unite to assert their legal rights as effectively and economically as practicable." *United Transportation Union* v. *State Bar of Michigan*, 401 U.S. 576, 580 (1971).

In *United Transportation Union*, this Court summarized the constitutional doctrine first enunciated in *NAACP* v. *Button*, 371 U.S. 415 (1963), where it held that the First Amendment, as here, protects the group right of providing free legal assistance in litigation. This Court stated:

> "The common thread running through our decisions in *NAACP* v. *Button* [371 U.S. 415 (1963)], *Trainmen* [*Bhd. of Railroad Trainmen* v. *Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964)] and *United Mine Workers* [*United Mine Workers* v. *Illinois State Bar Association*, 389 U.S. 217 (1967)], is that collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment. However, that right would be a hollow promise if courts could deny associations of workers or others the means of enabling their members to meet the costs of legal representation." *United Transportation Union* v. *State Bar of Michigan*, *supra*, 401 U.S. at 585-86.

Disclosure of contributors' names threatens the Foundation's very existence as a financially independent source of legal assistance to deserving workers throughout the country. The nationwide scope of Foundation-supported litigation and the disclosure order's effect on federal labor policy and constitutional doctrine underscore the need for review in this Court.

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* *See, e.g.*, LDF-supported cases, *Vogler* v. *McCarty, Inc.*, 451 F.2d 1236 (5 Cir. 1971); *Rock* v. *Norfolk & Western Ry.*, 473 F.2d 1344 (4 Cir.), *cert. denied*, 412 U.S. 933 (1973).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted and the disclosure order of the District Court for the District of Columbia reversed.

Respectfully submitted,

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Of Counsel

November 25, 1974

APPENDIX

Opinion of Charles R. Richey, *U.S.D.J.*,
Filed June 5, 1974

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 839-73

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *et al.*,

Plaintiffs,

—v.—

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC., *et al.*,

Defendants.

APPEARANCES:

For the Plaintiffs:

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MEMORANDUM OPINION

Once again this case is before the Court, in this instance on Plaintiff's Motion to Compel Answers to Interrogatories. After careful consideration of the memoranda filed in support of and in opposition to that motion, and the able oral argument of counsel, the Court has decided to grant Plaintiffs' Motion by Order of even date herewith. However, the matter does not end there. In their memoranda filed with the Court, the parties present divergent opinions as to the applicability of the second proviso to Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 73 Stat. 522, 29 U.S.C. §411(a)(4), which prohibits "interested employer" financing of employee lawsuits against unions and confers a statutory right of action upon unions to protect themselves from employer interference within the scope of Section 101(a)(4). See this Court's Memorandum Opinion in *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, et al. v. National Right to Work,* 366 F.Supp. 46 (D.D.C. 1974). The statutory prohibition giving rise to a union right of action states in pertinent part:

> "No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency * * * provided * * * that no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition."

Defendants contend that the proviso restricts so-called interested employer financing *only* of those employee lawsuits wherein a worker brings a complaint against his or

her union showing a violation of rights guaranteed by Section 101(a)-(b) of Title I of the Act. Plaintiffs argue that the plain meaning of the statute does *not* confine the Section 101(a)(4) proviso to suits against unions which assert Title I violations; rather, Congress intended the Section to apply to any judicial, administrative, or other proceeding brought by a member against his or her union regardless of the nature of the cause of action asserted. For the reasons set forth below, the Court has determined that the proviso's limitation on interested employer financing encompasses every employee suit against his own union and, therefore, we must reject the defendant's proposed restriction of the proviso's prohibition to suits claiming Title I violations.

We start with the language of Section 101(a)(4) itself which is unambiguous. The Section applies without qualification to "an action in any court, or in a proceeding before any administrative agency." The proviso, which follows, restrains interested employers from financing "any *such action,* proceeding, appearance, or petition" and clearly refers to "an action * * * or * * * proceeding" discussed in the primary clause of the section. There is nothing in the statutory language just mentioned to suggest that operation of Section 101(a)(4) with its proviso is somehow confined to Title I lawsuits. As the Court noted in its original memorandum Opinion in this case, "(w)here Congressional intent is clear in the language of the statute, there is no need to resort to general rules of statutory construction or legislative history in order to construe the provision in issue. * * *" *International U., U.A., A. & A.I.W.* v. *National Right to Work,* 366 F. Supp. at 48.

There are several decisions by appellate courts indicating that Section 101(a)(4) of the Act has application above and beyond suits or proceedings invoking Title I rights. The

United States Court of Appeals for this Circuit in *Roberts* v. *N.L.R.B.*, 350 F.2d 427 (D.C. Cir. 1965), considered Section 101(a)(4) of the Act in determining, in part, whether an order of the National Labor Relations Board, finding that the petitioner Union had engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the National Labor Relations Act[1] by fining a member because he had filed unfair labor practice charges with the Board, was invalid because the member failed to first pursue reasonable hearing procedures within the union. The Labor-Management Reporting and Disclosure Act came into play in this action because Section 101(a)(4) of the Act provides, where practicable, for a union member's exhaustion of the union's complaint procedures before turning to the Board or another forum for relief. Thus, the *first* proviso of Section 101(a)(4) which directly precedes the interested employer prohibition, states:

> "[t]hat any such member may be required to exhaust *reasonable hearing procedures* (but not to exceed a four-month lapse of time) *within such organization, before instituting legal* or administrative proceedings against such organization or any officer thereof • • •"

In its application of the above limitation on a worker's right to sue to the Board's Order premised upon Section 8(b)(1)(A) of the NLRA, the Court of Appeals determined that the operation of Section 101(a)(4) of the LMRDA did not in any way preclude the Board's ultimate exercise of its traditional powers under the NLRA to protect individuals from coercion by labor organizations, *but,*

> *"The proviso does authorize indeed it may require,* the agency or court to which the member comes for relief

[1] 29 U.S.C. §158(b)(1)(A).

> to withhold the exercise of its authority—for four months if reasonable internal procedures are available and are not earlier exhausted—in deference to the Congressional desire that a solution be reached by means other than at the hands of public authorities." 350 F.2d at 430. (Emphasis added)

The Court of Appeals' consideration and application of Section 101(a)(4) and the statutory limitations thereupon in its review of proceedings before the Labor Relations Board leaves no doubt that the Section applies beyond the area of suits and proceedings asserting Title I rights under the LMRDA.

The Court's conclusion in this regard is further buttressed by the recent decision by the Supreme Court in *N.L.R.B.* v. *Industrial Union of Marine & Ship Workers*, 391 U.S. 418, 88 S.Ct. 1717 (1968), a case involving an exhaustion of internal union procedures issue similar to that in *Roberts, supra.* The issue presented was "whether consistent with the applicable federal statutes (the NLRA and LMRDA) a union may penalize one of its members for seeking the aid of the Board without exhausting all internal union remedies." 88 S.Ct. at 1720. The Court noted that the constitution of the union charged with an unfair labor practice provided that a member could be expelled for filing a charge with the Board without first having exhausted "all remedies and appeals within the Union." 88 S.Ct. at 1721. With respect to such internal procedures, Section 8(b)(1)(A) of the NLRA preserves to a union "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." 29 U.S.C.A. §158(b)(1)(A). Notwithstanding this restraint on judicial interference with a union's regulation of its internal affairs, the Court found that where union rules penalize

members for filing unfair labor practice charges with the Board, other considerations of public policy are operative and must be effectuated. 88 S.Ct. at 1721.

However, the exhaustion of internal procedures requirement of Section 101(a)(4) of the LMRDA raised a further question as to the propriety of the Board action. The Court, in reviewing the relevancy of the first proviso to Section 101(a)(4) and commenting upon its applicability to unfair labor practice charges before the Labor Relations Board, held that the proviso did not bar a dissident worker's access to the Board and, ultimately, the courts, where his grievance could be reviewed and the public policy issues fully aired. The Court concluded that the wording "may be required" in the proviso,

> "is not a grant of authority to unions more firmly to police their members but a statement of policy that the public tribunals whose aid is invoked may in their discretion stay their hands for four months, while the aggrieved person seeks relief within the union. We read it, in other words, as installing in this labor field a regime comparable to that which prevails in other areas of law before the federal courts, which often stay their hands while a litigant seeks administrative relief before the appropriate agency. * * * We conclude that unions were authorized to have hearing procedures for processing grievances of members, provided those procedures did not consume more than four months of time, but that a court or agency might consider whether a particular procedure was "reasonable" and entertain the complaint even though those procedures had not been "exhausted". 88 S.Ct. at 1723-24.

Similarly, this Court reads the second proviso to Section 101(a)(4) of the Act "as installing in this labor field" a

principle that interested employers must stay their hands from contributing to employee suits against their unions regardless of the type of claims asserted therein.

Defendants also argue that where an action is properly brought by a union member against his union premised upon a non-Title I claim, "interested employer" financing is not precluded by Section 101(a)(4) of the Act because such preclusion would limit a union member's rights in violation of Section 103 of the Act. 29 U.S.C. §413. Section 103 provides:

> "Nothing contained in this subchapter shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and by-laws of labor organization."

Defendants contend that were the Court to apply Section 101(a)(4) beyond the area of Title I suits, for example, to NLRB proceedings,[2] it would be "limiting" the union member's right to sue in derogation of Section 103.[3]

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[2] *N.L.R.B.* v. *Industrial Union of Marine & Ship Workers*, 391 U.S. 418, 88 S.Ct. 1717 (1968); *Roberts* v. *N.L.R.B.*, *supra*.

[3] In support of this proposition, defendants rely on the recent decision by the Court of Appeals for the Seventh Circuit in *Adamczewski* v. *Local 1487, Machinists*, 73 CCH Lab. Cas. ¶14,463 (7th Cir. 1974). In that case, the Court found that the suit was financed by "interested employers" and on that basis dismissed a claim for injunctive relief arising under Section 101(a)(5) of the LMRDA. The Court chose not to dismiss an additional cause of action brought pursuant to Section 301 of the NLRA, 29 U.S.C. §185, on similar grounds in light of the so-called savings provision, Section 413, set forth in the text above. Instead, after finding that the employees who had brought the suit were "not * * * precluded by (Section 101(a)(4)) from pursuing any other remedies properly brought," the Court went on to dismiss the additional claim on a separate ground. 73 CCH Lab. Cas. ¶14,463 at 29,481. Defendants argue on the basis of *Adamczewski* that a claim "properly brought" under a statute other than Title I of the LMRDA

Defendants misconceive the import of Section 103, which is intended generally to preserve employee rights of action under the NLRA. It does not preserve a pre-existing right to employer financing since obviously employers are under no such obligation. At best, a dissident and litigious worker has a right to accept his employer's financial support, just as he is entitled to accept a loan from his bank or neighbor. However, it is the responsibility of this Court in implementing the mandate of the LMRDA to apply the statutory ban on "interested employer" contributions to employee suits against unions. The result is not an infringement on an employee's right to sue his union, but a limitation on what monies can finance the suit. The decision to restrain employer financing of employee lawsuits against unions was made by Congress through the enactment of Section 101 (a)(4) and the LMRDA, and the Court intends to implement this Congressional mandate where appropriate.

In view of the foregoing reasons, the statutory ban on "interested employer" financing extends beyond suits or proceedings arising under Section 101(a)-(b) of Title I of the LMRDA.

/s/ CHARLES R. RICHEY
CHARLES R. RICHEY
United States District Judge

Date June 5, 1974

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may be financed by interested employers. Defendants' application of such a holding on the part of the Seventh Circuit is simply erroneous. *Adamzewski* stands for the proposition that the determination that an interested employer has financed a suit arising under the NLRA or the Railway Labor Act, 45 U.S.C. §151-188, is not a basis for dismissal. We find no suggestion in *Adamzewski* that such a case may continue on its merits nourished by interested employer financing. The Court did not need to reach that question since it dismissed the matter in all respects. It is this Court's opinion that such financing could have been restricted pursuant to Section 101(a)(4), notwithstanding the progression of the suit on its merits.

Order of Charles R. Richey, *U.S.D.J.*,
Filed June 5, 1974

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action 839-73

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA and its LOCALS 1093, 558, and 25, *et al.*,

Plaintiffs,

—v.—

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC.,

and

NATIONAL RIGHT TO WORK COMMITTEE,

Defendants.

ORDER

Upon consideration of Plaintiffs' Motion to Compel Answers to Interrogatories, the memoranda filed in support of and in opposition thereto and the able argument of counsel, and it appearing to the Court that the information Plaintiffs seek goes to the heart of this litigation, and it further appearing that Plaintiffs have demonstrated good cause for obtaining the necessary information, it is

ORDERED this 5th day of June, 1974, that Plaintiffs' Motion to Compel Answers to Interrogatories is granted, and that

Defendants are required to provide Plaintiffs within fifteen days hereof with answers to interrogatories or portions of interrogatories as follows:

1. The first sentence of Interrogatory No. 3 in "Set No. II of Interrogatories by Plaintiffs to Defendants."

2. Interrogatory No. 1 in "Set No. II of Interrogatories by Plaintiffs to Defendants", requesting identification of certain donors to the Defendant Foundation, but only to the extent of identifying,

   (a) the 37 donors who made the donations identified in the answers by Defendants to interrogatories 2(b)(ii) and 2(b)(ii) [*sic*, should be 2(b)(ii) and 2(b)(iii)],

and

   (b) 37 of the donors among the 1048 donations identified in the answer by Defendants to interrogatory 2(b)(iv), the 37 to be the first or last 37 on the alphabetized donor list.

AND IT IS FURTHER ORDERED that the employer identities disclosed to Plaintiffs by Defendants' answers compelled by this Order not be made public and that Plaintiffs' counsel make known such employer identities only to particular persons whose assistance is required for the investigation of the contributing employers' interests and activities in the five specific respects recited in Plaintiffs' Memorandum Supporting Motion to Compel Answers to Interrogatories.

/s/ CHARLES R. RICHEY
CHARLES R. RICHEY
United States District Judge

Order of the United States Court of Appeals Dismissing Appeal, Filed June 28, 1974

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1973

Civ. No. 839-73

No. 74-1660

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA and its LOCALS 1093, 558 and 25, *et al.*,

—v.—

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC., *et al.*,

Appellants.

Before:

LEVENTHAL, MACKINNON and WILKEY,
Circuit Judges.

ORDER

On consideration of appellants' motion for supersedeas and stay, and this Court not having jurisdiction over the order of the District Court appealed from, it is

ORDERED by the Court that appellants' aforesaid motion is denied and this appeal is dismissed.

Per Curiam

Order Extending Time to File Petition for Writ of Certiorari

SUPREME COURT
OF THE UNITED STATES

No. A-156

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC., *et al.*,

Petitioners,

—v.—

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, ETC., *et al.*

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including November 25, 1974.

/s/ WARREN E. BURGER
Chief Justice of the United States

Dated this 13 day
of September, 1974.

Order of the District Court Denying Motion for Amendment and Modification of Order, Filed June 20, 1974

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

C.A. 839-73

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA and its LOCALS 1093, 558 and 25, *et al.*,

Plaintiffs,

—v.—

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC.,

and

NATIONAL RIGHT TO WORK COMMITTEE,

Defendants.

ORDER

The Court has before it Defendants' Motion for Certification under 28 U.S.C. §1292(b) and Plaintiffs' opposition thereto. In their motion, Defendants ask the Court to amend its Order of June 5, 1974 compelling identification of names of contributors to defendant Right to Work Foundation so as to include a certification to the United States Court of Appeals for the District of Columbia Circuit pursuant to 28 U.S.C. §1292(b). Defendants contend that the Court's Order entered June 5, 1974 involves controlling

questions of law as to which there are substantial grounds for differences of opinion, and that an immediate appeal from such Order will materially advance the ultimate termination of the instant litigation. The Court does not believe there are substantial grounds for differences of opinion respecting the aforementioned Court Order compelling identification of names of contributors. Accordingly, the standards of §1292(b) have not been met and Defendants' motion must be denied.

Contrary to Defendants' assertions, this Court has not ridden roughshod over Defendants' freedom of association or right to privacy. Furthermore, after careful consideration of the Memoranda filed in support of and in opposition to Plaintiffs' Motion to Compel Answers to Interrogatories, and based upon the record at the oral argument on Defendants' Motion in which all counsel argued in able and comprehensive fashion, the Court found in its June 5 Order that the information sought by plaintiffs "goes to the heart of this litigation" and that Plaintiffs had "demonstrated good cause for obtaining the necessary information." In addition, there is no other reasonable way for Plaintiffs to obtain the information sought in the subject interrogatories and discovery process.

In light of the Court's Findings and the recent decision of the Court of Appeals for this circuit in *Carey* v. *Hume*, No. 71-1736 (D.C. Cir. Jan. 28, 1974), it is clear that Plaintiffs are entitled to the material they seek, notwithstanding Defendants' assertion of First Amendment rights to withhold the information. See also *Garland* v. *Torre*, 259 F.2d 545 (2d Cir. 1958), cert. denied 358 U.S. 910 (1958); *Baker* v. *F & F Investment*, 470 F.2d 778 (2d Cir. 1972).

The criteria discussed by the Court of Appeals in *Carey* v. *Hume*, when applied to the facts of this case, compel

granting Plaintiffs the discovery they desire. In light of the sensitivity of the information Plaintiffs seek through certain of their interrogatories, the Court earlier provided protection for the Defendants and their contributing employers by strictly limiting the use to which Plaintiffs' counsel may put the names they discover. As a matter of law, the Defendants are entitled to no more.

Where a decision such as that of the Court of Appeals in *Carey* v. *Hume* so clearly controls the discovery questions raised in a party's motion to compel answers to interrogatories, it cannot be said that there exists a "substantial ground for difference of opinion" warranting a stay of the proceedings and certification of the issues to the Court of Appeals. Indeed, stopping the case in its present posture would be contrary to the interests of justice in effecting a timely and proper termination of this litigation.

Accordingly, for all the above reasons, it is by the Court this 20th day of June,

ORDERED that Defendants' Motion for Amendment and Modification of its Order compelling Discovery entered June 5, 1974 to Provide for Certification under 28 U.S.C. §1292(b) to the Court of Appeals be and the same is hereby denied; and it is

FURTHER ORDERED that the Court's Order entered June 5, 1974 be stayed for a period of 5 days from the date hereof in which time Defendants may seek appellate review of the ruling therein.

/s/ CHARLES R. RICHEY
CHARLES R. RICHEY
United States District Judge

Order of the United States Court of Appeals Staying Order Pending Further Order, Filed June 28, 1974

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1973

No. 74-1661

NATIONAL RIGHT TO LEGAL DEFENSE AND EDUCATION FOUNDATION INC., and NATIONAL RIGHT TO WORK COMMITTEE,
Petitioners,

—v.—

HONORABLE CHARLES R. RICHEY, District Judge, United States District Court for the District of Columbia,
Respondent.

Before:

LEVENTHAL, MACKINNON and WILKEY,
Circuit Judges.

ORDER

On consideration of the petition for writ of mandamus and for stay, it is

ORDERED by the Court that responses shall be filed to the aforesaid petition on or before July 8, 1974, and, it is

FURTHER ORDERED by the Court that the order of the District Court entered June 5, 1974, is stayed pending further order of this Court to afford this Court an opportunity to consider the petition for writ of mandamus and the responses thereto.

Per Curiam

Circuit Judge MacKinnon would deny the motion for stay.